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Attorneys for Plaintiff  
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka  
CHRISTENE COHEN), *in personam* and  
F/V POINT LOMA, Official Number  
515298, a 1968 steel-hulled, 126-gross ton,  
70.8- foot long fishing vessel, her engines,  
tackle, furniture, apparel, etc., *in rem*, and  
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**PLAINTIFF AND COUNTER-  
DEFENDANT DEL MAR SEAFOOD,  
INC.'S ANSWER TO DEFENDANT  
F/V POINT LOMA AND CLAIMANT  
F/V POINT LOMA FISHING  
COMPANY, INC.'S COUNTERCLAIM**

Plaintiff and Counter-Defendant, DEL MAR SEAFOODS, INC. ("Del Mar") hereby  
answers the Counterclaim filed by Defendant F/V POINT LOMA and Claimant F/V Point  
Loma Fishing Company, Inc. ("Counterclaimants") as follows:

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DelMarSeafoods/2504

1. Responding to paragraph 39 of the Counterclaim, Del Mar denies each and every allegation contained in this paragraph.

2. Responding to paragraph 40 of the Counterclaim, Del Mar admits that Barry Cohen paid Del Mar \$175,000 in November of 2005. However, Del Mar denies each and every other allegation contained in this paragraph.

3. Responding to paragraph 41 of the Counterclaim, Del Mar denies each and every allegation contained in this paragraph.

4. Responding to paragraph 41 of the Counterclaim, Del Mar denies each and every allegation contained in this paragraph.

5. The remainder of the Counterclaim contains a request for relief. Del Mar denies that Counterclaimants are entitled to any relief.

6. Del Mar denies each and every allegation in the Counterclaim, whether express or implied, that Del Mar has not previously or expressly admitted in this Answer.

## AFFIRMATIVE DEFENSES

1. The Counterclaim and each cause of action therein fail to state facts sufficient to constitute a cause of action or claim for relief.

2. Counterclaimants lack standing and capacity.

3. The Counterclaim and each cause of action against Del Mar therein are barred by the doctrines of estoppel and waiver.

4. To maintain an action for wrongful arrest of a maritime vessel, the detainee must show that the arrest was not merely due to negligence, but that the action arose from malice, bad faith, or reckless disregard of the other party's legal rights. Counterclaimants cannot maintain an action for wrongful arrest because Del Mar did not request that the Court arrest the Vessel out of malice, in bad faith or in disregard of anyone's rights, including Counterclaimants.

5. Counterclaimants are barred from asserting a wrongful arrest because the vessel was arrested with probable cause.

6. Counterclaimants are barred from asserting a wrongful arrest because a claim for

1 wrongful arrest may not be raised in a counterclaim under admiralty practice.

2 7. Counterclaimants are barred from asserting the Counterclaim and each cause of  
3 action therein under the doctrine of unclean hands -- their own conversion of the Vessel,  
4 fraudulent conveyance, fraud or attempted fraud.

5 8. If any Counterclaimant sustained any damages as alleged in Counterclaim, such  
6 damages were proximately caused and contributed to by such Counterclaimant in failing to  
7 mitigate its alleged damages, namely by posting a bond to secure the release of the Vessel.  
8 Counterclaimant's failure to mitigate its alleged damages diminishes any recovery herein.

9 WHEREFORE, Del Mar prays as follows:

- 10 1. That Counterclaimants take nothing by their action;  
11 2. That the Counterclaim and each claim therein be dismissed with prejudice;  
12 3. That Del Mar have judgment against Counterclaimants;  
13 4. That Del Mar recover its costs of suit incurred herein; and  
14 5. For such other and further relief as the Court deems just and proper.

15 Dated: July 19, 2007

16 COX, WOOTTON, GRIFFIN,  
17 HANSEN & POULOS, LLP  
Attorneys for Plaintiff  
18 DEL MAR SEAFOODS, INC.

19  
20 By: 

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